

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
SMITH ROCK QUARRY,

Appellant,

V.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 80-45

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$150 civil penalty for alleged violation of Section 400-040 of the General Regulations for Air Pollution Sources of the Southwest Air Pollution Control Authority, came before the Pollution Control Hearings Board David Akana, and Nat W. Washington (presiding), at a formal hearing in Longview, Washington, on June 30, 1980.

Appellant was represented by its attorney, Brian H. Wolfe.

Respondent was represented by its attorney, James D. Ladley.

Having heard the testimony, having examined the exhibits and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
5 certified copy of its General Regulations for Air Pollution Sources  
6 and amendments thereto, which are noted.

7 II

8 On March 3, 1980, at about 2:20 p.m. respondent's inspector  
9 noticed a gray colored plume rising from appellant's rock crushing  
10 machine which was operating in a quarry near Woodland, Washington.  
11 After positioning himself about 100 yards southwest of the crusher he  
12 observed opacities ranging from 30% to 60%. After discussing the  
13 matter with Greg Smith who was operating appellant's rock crushing  
14 machine, the inspector issued Field Notice of Violation No. 3290. On  
15 March 4, 1980, respondent sent by certified mail its formal Notice of  
16 Violation declaring a civil penalty of \$150 for the alleged violation  
17 of Section 400-040 of its General Regulations for Air Pollution  
18 Sources. The notice and declaration of civil penalty is the subject  
19 of this appeal.

20 III

21 Section 400-040(1) makes it unlawful for any person to cause or  
22 allow the emission of any air contaminant for a period totaling more  
23 than 3 minutes in any one hour which of an opacity equal to greater  
24 than 20%.

25 Section 400-130(2) provides for a civil penalty of up to \$250 per  
26 day for each violation of the authorities General Regulations for Air  
27

1 Pollution Sources.

2 IV

3 Respondent's inspector took his opacity readings at a point in the  
4 plume at about 10 feet from the place on the conveyor of the crusher  
5 where the emission was emanating. The plume gradually dissipated and  
6 became invisible at about 100 feet from where it emanated. There was  
7 no point at which a substantial portion of the plume abruptly  
8 dissipated as would have happened if a substantial portion of the  
9 plume had consisted of condensed water vapor. The plume had the  
10 visual characteristics of a particulate plume consisting of dust  
11 rather than a plume consisting substantially of condensed water  
12 vapor. The emission was gray in color.

The weather was cloudy with 100% cloud cover. The wind was  
14 variable at about 3 miles per hour. It was not raining at the time,  
15 but it had been raining a short before the arrival of the inspector.

16 The inspector took visual opacity readings of the emissions at 15  
17 second intervals for 3-1/4 minutes. All readings were over 30% with  
18 some as high as 60%.

19 Respondent's inspector complied with all of the mandatory  
20 requirements of Source Test Method 9A of the Department of Ecology but  
21 did not comply with it's optional, but highly recommended  
22 procedures,<sup>1</sup> in that he did not note in his Field Observation Report  
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24 1. Test Method 9A provides in part as follows:  
25 The observer shall record the name of the plant, emission location  
type of facility, observer's name and affiliation, and the date on  
a field data sheet. The time, estimated distance to the emission

1 the ambient relative humidity, ambient temperature and the estimated  
2 depth of the plume at the point of observation. Information on the  
3 ambient humidity and the ambient temperature would have been helpful  
4 to the Board.

5 V

6 Appellant contended that there was a very small amount of dust  
7 being emitted and that by far the greater part of the opacity was  
8 caused by condensed water droplets resulting from moist rock coming in  
9 contact with crusher rollers which had been friction heated during the  
10 rock crushing operation. Appellant, however, failed to meet the  
11 burden of proof of establishing that the opacity exceeded 20% only  
12 because of the presence of condensed water droplets. Section  
13 400-040(1)(b)<sup>2</sup>.

14  
15 1. Cont.  
16 location, approximate wind direction, estimated wind speed,  
17 description of the sky condition (presence and color of clouds),  
and plume background are recorded on a field data sheet at the  
time opacity readings are initiated and completed.

18 The observer should make note of the ambient relative  
19 humidity, ambient temperature, the point in the plume that the  
20 observations were made, the estimated depth of the plume at the  
point of observation, and the color and condition of the plume.  
It is also helpful if pictures of the plume are taken.

21 2. Section 400-040(1)(b) provides the following exceptions to  
opacity standards:  
22 (b) When the owner or operator of a source supplies valid data to  
23 show that the opacity is in excess of twenty percent (20%) as the  
24 result of the presence of condensed water droplets, and that the  
25 concentration of particulate matter, as shown by a source test  
approved by the Control Officer, is less than one-tenth (0.10)  
grains per standard dry cubic foot. For combustion emissions the  
exhaust gas volume shall be corrected to seven percent (7%) oxygen.

1 VI

2 The emissions which were observed by respondent's inspector were  
3 also visible to appellant's rock crusher operator.

4 VII

5 Any Conclusions of Law which should be deemed a Finding of Fact is  
6 hereby adopted as such.

7 From these Findings the Board makes the following

8 CONCLUSIONS OF LAW

9 I

10 Appellant knowingly violated Section 400-040(1) of respondent's  
11 Regulation I as alleged, on March 3, 1980, by allowing or causing an  
12 air emission of dust in excess of the limit established by  
respondent's regulations.

14 II

15 Any Finding of Fact which should be deemed a Conclusion of Law is  
16 hereby adopted as such.

17 From these Conclusions the Board enters this  
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ORDER

The \$150 civil penalty for the alleged violation of Section 400-040(1) is affirmed, provided, however, that \$100 of the civil penalty is suspended on the condition that appellant not violate respondent's regulations for a period of two (2) years after this order becomes final.

DATED this 18 day of July, 1980.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER